

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday October 12, 2010
6:30 p.m.

Chairman Arthur Henning called the meeting to order at 6:30 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning	Vice-Chairman Daniel Michnik
Ryan Mills	David D'Amato (arrived at 6:42 p.m.)
Robert Geiger	Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
Planner Brad Packard
Town Attorney Steven Bengart
Councilman Bernard Kolber

Other interested parties present:

Jeffery Palumbo	Corey Auerbach
Peter Buchbinder	Ed Gloss
Anastasia Scime	Jamie Scime
Peter Davis	Laurie Greene
John Knauth	Joe Delmonte
David Kwiatkowski	Thomas Augello
Stuart R Romal	Marcia Mitchell
Fred Mitchell	Lawrence J Higley
Maria Saminico	John Kanutsu
T. Hallac	Jennilyn Romal
Lawrence Senear	

Old Business

Appeal No. 6

Maria DeStefano
Residential Single-Family

Requests the Board of Appeals approve and grant a 5' variance to allow a 660' front yard setback for a construction of a new residence at 6430 Heise Rd.

Appeal No. 6 is in variance to § 229-52 (A)(3).

DISCUSSION:

Chairman Henning explained that this agenda item was tabled at the last meeting based on information from the property owners at 6450, 6400, 6404 and 6408 Heise Road. It was the Zoning Board's feeling that the property was set back too far. A letter was received by a neighbor by the name of King at 6450 Heise Road and reads: "We object to the variance due to the fill added in past causing ponding and erosion on our property. Additional fill will cause more damage. The owners disregarded the stop order from the Town." There is a letter on file from Mr. Callahan to the owners regarding the problem with the fill, dated October 16, 2003.

Jeffery Palumbo and Corey Auerback, of Damon Morey, are representing the petitioner. The client, Lucy Wells and Maria DeStefano have arrived at the meeting; they submit neighbor notification forms for 6490, 6404, 6408 and 6400 Heise Road. The forms are on file.

Mr. Palumbo spoke to the issue regarding alternative layouts as requested by the Board. There were no alternate layouts that would serve the clients ultimate purpose. The only alternate layout would be to move the proposed building closer to Heise Road, which doesn't accomplish much. Typically, there are front yard setback issues because the residents next door don't want the proposed house in their backyard. So if you don't move this house all the way up, it is still in someone's back yard. The property owner should be able to use the entire property and to keep their small children as far away from Heise Road as possible. Mr. Palumbo said the variance will not create an undesirable change to the neighborhood because the character has already been changed with the Open Development that is there. There is no alternative layout available to the clients. This is a substantial variance request; however it will not have a substantial impact on the neighborhood. If this request was granted it would probably enhance the physical and/or environmental. The objection from the neighbor had to do with the ponding and the erosion in the area, this issue will be eliminated. If a home is built there is an obligation that there cannot be any more storm water run-off than what currently exists. Also, the Town Engineering Department will require a drainage plan from a licensed Engineer; the applicant is willing to do this. This issue could be considered a self-created problem; however the applicant did not create the situation with Open Development area immediately adjacent to the south.

If the proposed house was brought up towards Heise Road 200' it would be right next to the accessory structure that was just approved for 6420 Heise Road. Mr. Palumbo said this would also put the house in the backyards of the surrounding neighbors. Mr. Mills said the residents on Stonebriar would have the proposed house closer to them if the variance was granted. No matter where the house is placed somebody loses. Mr. Mills asked what would happen if the variance was not granted. Mr. Palumbo said it would be up to the owners but they would probably do nothing at this point and wait until the Board changes before they make another attempt.

Mrs. Wells said her father bought this land 30 years ago so that his two (2) children could build homes and live there.

Mr. D'Amato voices his concern with the fact that Mrs. Wells is speaking for her brother who does not own the land yet but plans on building there. She is also speaking for her mother who is the owner of the property, Mrs. DeStefano should be speaking. The Board has no documentation

from the brother; perhaps he might come to a compromise with the Board and move the house. Mr. Palumbo said that he, as an officer of the court, is representing that the brother is the one who is going to build this house. Ultimately, the property will be in the brother's name.

Mr. Geiger voices his concern saying there is no guarantee that the brother will build on the property, as he does not own the property, he is not the applicant and he is not present. Mr. Palumbo said he does not have a problem if the Board conditions the approval on the title of the property being in the brother's name. Mr. Geiger said the Town Attorney is not present at this time and he would want his approval on this issue.

Chairman Henning asked if there is a chance for a compromise on the appeal. Mr. Palumbo said if there was a chance he would have started with that. If the request is approved a condition would be the requirement for a drainage plan. Mr. Palumbo has no problem with that condition.

Mr. Geiger suggested the Town Attorney review the issue of the brother being in Philadelphia and not being at this meeting. Town Attorney Steven Bengart said that is not an issue.

Mr. Mills asked if the client would be amenable to have extensive landscaping along the north and west property line to mitigate the neighbors' views.

Mr. Palumbo points out that the neighbor to the north did not have a problem with privacy rather a ponding and erosion concern. He is sure there will be landscaping, his client is not opposed to landscaping but 1100' is a lot of landscaping. Mr. Mills suggested landscaping be along the border of the house on the north side, not along the entire northern property line. Mr. Palumbo said that is not a problem.

Mr. Mills asked if there are windows planned for the southern side of the proposed structure. He reviews a set of plans which indicates a window in the door, a window in the laundry room and there is a garage. On the second floor there is a window facing south.

No Motion is made.

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills, to **close** the hearing for Appeal No. 6 under Old Business.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

New Business

Appeal No. 1

Peter Buchbinder
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a variance to allow for both an attached and detached garage.
- 2.) an 11' variance to allow for an accessory structure 27' in height.
- 3.) a 216 square foot variance to allow for a 936 square foot accessory structure.

All requests apply to 8955 Williams Court.

Appeal No. 1 is in variance to § 229-55 (H), § 229-55 (E) (2), and § 229-55 (D)

DISCUSSION:

Peter Buchbinder and his wife Kate are present. Mr. Buchbinder said he wants to build the structure for storage of entertainment equipment, outside patio furniture, yard equipment, etc.

Neighbor notification forms are on file.

The Buchbinder's moved into the house in July 2009, the size of the house is 4500 square feet. Mr. D'Amato asked if they have already run out of space. Mr. Buchbinder said they have not run out of space he is adding a structure so he can store his snowmobiles, yard furniture and lawn equipment in a place outside the three-car garage. There is a basement. Mr. D'Amato asked if the applicant explored the option of attaching the house. Mr. Buchbinder said they have discussed that but it is not an option they want to go with. The design of the structure will match the house; it will have garage doors on it.

There is a chance that the same sub-contractors that built the house may build the accessory structure. Mr. Mills asked if the applicant could get away with any less square footage in terms of the structure and still accomplish what they need to. Mr. Buchbinder said the architect planned the structure so that it would match the size of the garage, so it looks symmetrical. Mr. Buchbinder has not talked to the neighbors behind his home about this request.

Mr. Mills asked if the applicant has a landscape plan for the accessory structure. Mr. Buchbinder does not have a plan but he intends on using Bison Nursery to continue the same type of landscaping they currently have at their home. The landscaping will be around the entire accessory structure.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 1, as written.

Robert Geiger	Aye	David D'Amato	Nay
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 2

Edward Gloss
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 4' variance to allow for a 6' side yard setback for the construction of an addition to an existing attached garage at 9350 Clarence Center Road.

Appeal No. 2 is in variance to § 229-63(A).

DISCUSSION:

Edward Gloss is present. He submits two (2) neighbor notification forms for the file. Mr. Gloss currently has a single-car garage; he would like to have a two-car garage so he can park his vehicles in it.

The exterior wall will be taken down and moved 12' 7" to the east. The power line will have to be moved. The roof line on the garage will remain as is and it will be re-shingled. The siding and the brick will be the same. The front elevation will match the house. Mr. Gloss has lived in the house for six (6) years. He would like the garage door to be a single large door. Pinnacle Construction will be doing the work.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 2, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 3

Jamie Scime
Planned Unit Residential Development
(PURD)

Requests the Board of Appeals approve and grant a 5' variance to allow for a 5' side yard setback for the construction of an accessory structure at 8201 Melissa Renee Court.

Appeal No. 3 is in variance to § 229-55 (E)(1).

DISCUSSION:

Jamie and Anastasia Scime are present. Mr. Scime explained the additional accessory structure will be used for storage of their third car, the variance is for better use of the yard.

Mr. Mills asked if the applicants considered other locations for the structure. Mrs. Scime said the driveway would have to be extended if the garage was set further back. The vehicle to be stored in the garage is seasonal.

Mr. Michnik clarified that the garage is proposed be placed at the end of the driveway.

Mr. Mills asked if the applicant explored the structure being attached to the home. Mr. Scime said that would be significantly more money. Mr. Mills said many of the other accessory structures in the neighborhood are either attached or connected with a breezeway. Mrs. Scime said they are having it custom built by the Amish and it will tie in with the house and the neighborhood. The building department told them it is considered a shed because it is less than 200 square feet. It will have a garage door and the front façade will be white vinyl to match the house.

Neighbor notification forms are on file.

The existing shed will remain. There is a basement in the house. The vehicle that will be stored in the garage is currently stored outside. The man door on the structure will face the house.

Mr. Michnik asked if there is some type of decorative fencing the applicant can put up between the house and the garage. Mr. Scime said they will landscape the area. Mr. Michnik suggested a breezeway. Mrs. Scime said they will consider that. There are a few examples in the Town that show a tastefully done breezeway. Mrs. Scime said she is more than willing to look at these examples to obtain an idea for her request. She asked for addresses of the examples the Board referred to. They want to start construction immediately. If the request was tabled it would create a hardship because the garage is custom made and would take approximately 6 weeks to make. There are sheds in similar locations on other properties in the neighborhood.

ACTION:

Motion by Robert Geiger, seconded by Daniel Michnik, to **approve** Appeal No. 3, as written.

Robert Geiger	Aye	David D'Amato	Nay
Ryan Mills	Nay	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 4

Peter Davis
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to allow for an accessory structure to be placed within the front yard space of a corner lot at 8401 Black Walnut Drive.

Appeal No. 4 is in variance to § 229-55 (D).

DISCUSSION:

Peter Davis and his son Will are present. Mr. Davis has lived at this address for just over nine (9) years. He contracted with a company in July 2010 to custom build an accessory structure that would be aesthetically pleasing to the neighborhood. The roof pitch is 9/12, which is similar to other structures in the neighborhood. It is a 10' x 12' structure. There is a double window facing the street with vinyl shutters to match. It is a neutral color. He used an architectural shingle to make it look like it belonged in the area. On July 16, 2020 he applied for a building permit. The application was approved on July 21, 2010. It was staked through the summer. He put in a 7" crusher run base that is 2 feet larger perimeter all the way around; it is 14" x 16" for drainage. On top of the crusher run, at 4" in depth all the way around the outside is a 2' architectural stone. It is not in the right-of-way. It is 12' off the existing structure and is behind the rear wall of the home. There are two similar locations at the intersection of Morningwood and Old Post. There is no electrical in the structure.

Chairman Henning noted that there are two (2) neighbor objections in the file. One is from John and Susan Russ and the other is from Daniel Russ.

Laurie Greene lives across the street from Mr. Davis. She is thinking of retiring in the future and if people are allowed to put structures in the front of their homes rather in the back it makes it hard for her to sell her home. The shed will decrease the value of the home. It is a nice shed but the first thing you see when you turn the corner is the shed. Who wants to go around the corner and see a shed?

Mr. Davis explained that the landscaping is not complete just yet. He has put in 18 substantial trees. The intention is to completely seal off the side that faces Walnut Creek with privet hedges.

Mr. Geiger pointed out the structure is on a cement pad, so it could be moved. Mr. Davis said his back yard backs up to the neighbor's side yard on Walnut Creek. In the southwest corner of his property is a play house which he would like to keep.

Mr. Davis said there are 14,000 pounds of crusher run and a yard and a quarter of architectural stone around the outside that was put in with heavy machinery. His situation is identical to the one on the corner of Old Post and Morningwood Roads.

The shed will be used to store property maintenance equipment; to relieve the storage in the garage.

Mr. D’Amato asked if the shed could be moved adjacent to the four (4) evergreens that are in the rear of the property. Mr. Davis explained that there is a swale back there that floods several times a year; there is no drainage in that area.

Mr. Mills asked if there was anywhere else in the back yard that the shed could be moved to. Mr. Davis said he has a shallow yard and he did not want to be on Walnut Creek. The ideal location is where the play house is but he does not want to get rid of the play house yet. He does not know what the cost would be to move the shed. Mr. Mills asked if the applicant would be amenable to a condition of planting privet hedges, if the variance was approved. Mr. Davis agreed.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written with the following condition:

-the eastern perimeter of the shed is to have 30” tall hedgerow plantings along the entire eastern side by the end of July 2011.

Robert Geiger	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 5

William Thompson
Residential Single-Family

Requests the Board of Appeals approve and grant a 16’ variance to allow a 29’ rear yard setback for the construction of a new addition to an existing residence at 8432 Hidden Oaks Drive.

Appeal No. 5 is in variance to §229-52 (C).

DISCUSSION:

John Knauth, architect, is representing the applicant. The original purpose for the addition was to house the hot tub owned by Mr. Thompson. He also has a cramped dining room and Mr. Thompson entertains often. Mr. Knauth submitted a second set of plans; he would like approval on both plans if possible. Both plans offer the same footprint, the difference is one plan is an enclosed addition and the other is open and an enclosed area within. Mr. Thompson would prefer the enclosed addition however this poses a problem for the hot tub. Mr. Knauth said there are precedents in the neighborhood that encroach on the 45’ setback.

Mr. Callahan said this subdivision was map covered and the zoning required 25’ rear yard setback; subsequently new zoning laws were adopted that required a 45’ rear yard setback.

Mr. Knauth explained the existing deck is being rebuilt. Victory Construction will do the work. They would like to start immediately.

Mr. Mills asked if the hot tub will be recessed. Mr. Knauth said no.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 5, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 6

Marie and Joseph Delmonte
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to allow an accessory structure within the front yard space of a principal structure (8' forward of the primary residence) at 8235 Miles Road.

Appeal No. 6 is in variance to § 229-55 (D).

DISCUSSION:

Joe Delmonte is present and explained that he does not have a garage and needs one with this type of weather.

Mr. Geiger asked if the applicant thought about locating the garage against the house if he went straight back. Mr. Delmonte thought of that but the back side of the house is his art studio and there are windows, he does not want to lose any light. There is also a kitchen window that would be lost if the structure was put back there.

Two neighbor notification forms are on file.

The addition will look just like the house. There will be one door; windows on the side and the back, the size will be 20' x 20' or 24'. There will be a lot of landscaping done around the structure.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 6, as written.

Robert Geiger	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 7

David Kwiatkowski
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a 480 square foot variance to allow for a 1,200 square foot detached accessory structure.
- 2.) a 1’ variance to allow an overhead garage door 10’ in height.
- 3.) a 2’ variance to allow for an accessory structure 18’ in height.

All requests apply the construction of a new detached garage at 5100 Elmcroft Court.

Appeal No. 7 is in variance to § 229-55 (D), 229-55 (I) and 229-55 (E) (2).

DISCUSSION:

David Kwiatkowski is present. He previously had a variance approved. He was required to obtain a soil sample which led to the requirement of installing a full footer. To add the footer would have cost him \$8,000; this was too much for his budget. He explored the option of a pole barn, but that didn’t work out. The differences in this variance and the previous one are the requests on the door and the size of the structure. Mr. Kwiatkowski needs to back his truck into the structure.

Mr. Michnik asked why the applicant needs such a big structure. Mr. Kwiatkowski explained that he owns three (3) classic cars that he would like to store in the proposed structure. He could cut the size of the garage down to 1176’.

Mr. Kwiatkowski said the materials of the accessory structure will match the house which includes vinyl siding and brick.

ACTION:

Motion by Arthur Henning, seconded by Robert Geiger, to **approve** Appeal No. 7, as written.

Robert Geiger	Aye	David D’Amato	Nay
Ryan Mills	Nay	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 8

Lawrence D. Senear
Residential Single-Family

Requests the Board of Appeals approve and grant a 44.06' variance to allow an 80.94' frontage lot for the creation of a new residential building lot at 8815 Stahley Road (proposed lot would derive road frontage from and be addressed to Willow Run Court).

Appeal No. 8 is in variance to § 229-50 (A).

DISCUSSION:

Lawrence Senear, architect, is representing the property owner, Mr. Iannucci. Mr. Augello, attorney, is also present and explained that the request is due to the odd way the adjacent parcel has been cut up; the lot at the buildable line is more than 125' wide. The minimum lot size requirement has been met. The lot would be in compliance with all setback requirements if a structure was to be built on it. The statute also contemplates a waiver of the 125' frontage in the event of a cul-de-sac; the existing lots fell within that. There was an attempt to purchase property adjacent to the lot in order to meet the frontage requirements but the deal fell through. You would not be able to tell that this is not a complying lot looking from Willow Run Court. Allowing the variance would allow the lots to be sold as buildable lots. All four (4) lots shown on the document labeled "minor subdivision plat map A" are owned by Mr. Iannucci.

Mr. Mills clarified that there will be two (2) building lots that would not need a variance, but the other two (2) do. Mr. Augello further clarified that with the variance they will be getting three (3) building lots; one (1) on Willow Run and two (2) on Stahley Road. If the variance is denied there would be two (2) large lots on Stahley Road. Mr. Mills asked if the applicant would be amenable if the Board conditioned the granting of the variance on the size of the structure being in excess of 2500 square feet. Mr. Augello said what would be amenable is 2500 square feet for a two (2) and a half story. Mr. Mills said understanding there are no deed restrictions on Willow Run Court, and the statute that Mr. Augello referenced, there are certain structures on Willow Run Court that are in excess of that.

Chairman Henning said the Board's concern is that this is a substantial variance.

Larry Higley, who lives next to the property in question, said he would rather see a house go up there. As far as the size of a structure, 2500 square feet is not out of the question. He has talked to most of the neighbors and he submits letters stating their agreement that they are in favor of him. If the lot is sold with a lot on Stahley Road that would leave grass area out back; it would leave a hole in his cul-de-sac that would depreciate the values of the houses. In response to Mr. Mills' question, Mr. Higley has a house on the street, he will build another house and sell his current house. Mr. Higley's concern is with the section that measures 44.07 x 7.03. There is more than enough frontage to get his driveway and utilities through. There is precedent in the area; there are some lots that do not have the 125' of frontage on the cul-de-sac.

Stuart Romal, owns the property next to the little parcel, said that up until a few weeks ago there was an agreement to transfer the property, the thing that broke it down was he was requesting a

minimum square footage of 2500 for any home that was built on the parcel. The smallest house on his street is 2400 square feet and the largest is 3100 square feet and to build a 2000 square foot ranch would detract from the property values. The property is still available if they can meet the 2500 square foot minimum. Mr. Senear and Mr. Augello said there was another issue that broke down the agreement, that issue had to do with money.

Jennilyn Romal, adjacent neighbor, said it has nothing to do with money. She approached all of her neighbors regarding the square footage and they all felt it was a benefit.

Ted Hallac, neighbor across the street, voices his concern that nothing ever gets resolved and it could be tonight. He is concerned that there will be a couple houses added to the area. He said Mr. Romal has tried to sell his house but has had no luck because he has no backyard. He would like to see the Board come to an agreement tonight and make these two (2) buildable lots.

Marcia Mitchell, of 6243 Willow Run Court, is concerned with the quality of the homes in the area. She does not want to see a small home in the midst of all the larger homes.

Mr. Michnik clarified that if this does not get resolved those lots will remain as they are today. The property owner of the lot on Stahley Road will not want to build on the back of that lot.

Mr. Mills explained that the Board can grant the variance and there does not have to be a purchase from Mr. Romal. Restrictions can be put on a variance approval; that restriction may be that a 2500 square foot minimum size ranch house is to be built on the lot.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 8, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

ACTION:

Motion by David D'Amato, seconded by Robert Geiger, to **approve** the minutes of the meeting held on September 14, 2010, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED

Meeting adjourned at 9:00 p.m.

Carolyn Delgato
Senior Clerk Typist